

PURCHASING AND LICENSING COMMITTEE

11-0378R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING
LIQUOR LICENSE OF THAI MIA, INC. (THAI KRATHONG
RESTAURANT), 308 SOUTH LAKE AVENUE.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

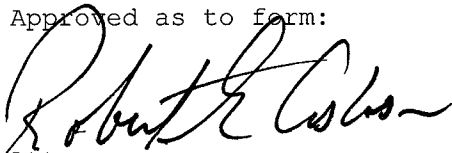
a) On June 1, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Thai Mia, Inc., d/b/a Thai Krathong Restaurant, 308 South Lake Avenue and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on July 18, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Thai Mia, Inc., d/b/a Thai Krathong Restaurant, 308 South Lake Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action, and that payment of \$250 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar violations.

Approved as to form:


Attorney

CLERK JJC:mao 7/5/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on June 1, 2011, regarding the on sale liquor license of Thai Krathong. On October 6, 2010, the police department conducted alcohol compliance checks and the bartender was ticketed for selling alcohol to an underage individual (Section 8-35). The licensee was also cited for this violation. This is the first offense for the licensee, and Section 8-9 provides that the presumptive penalty for a first offense is a \$500 penalty. The recommendation of the AGTC is to impose a civil penalty of \$500 payable within 30 days of council action, and that payment of \$250.00 of the penalty be stayed for a period of one year on the condition that the Licensee have no same or similar violations. The commission stated that mitigating circumstances of no previous violations and the licensee has implementing new carding procedures warrants a reduction of the fine.

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: Thai Mia, Inc., d/b/a Thai Krathong Restaurant, 308 South Lake Avenue,
Duluth, Minnesota 55802.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on June 1, 2011, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on June 1, 2011 upon completion of the hearing.

Terri L. Lehr, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusion and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at a premise located at 308 South Lake Avenue, Duluth, Minnesota.
2. On October 6, 2010, an employee of Licensee was issued a citation for sale of intoxicating liquor to a person under the age of 21 in violation of Duluth City Code section 8-28. The employee failed to appeal or otherwise challenge the citation within the allowed time period.
3. The Licensee was also issued a citation under Duluth City Code section 8-35 for

the illegal sale and convicted of this offense on November 4, 2010.

4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of June 1, 2011.
5. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9. Mitigating circumstances include the following: The Licensee has been in business for seven years with no prior violations. The Licensee has been a good corporate citizen. Immediately following this incident the Licensee set up a policy to reinforce checking the identification of anyone who appears 35 years of age and younger. The Licensee paid a district court fine in the amount of \$585.00.

CONCLUSIONS

Based upon these facts, the commission makes the following conclusions:

1. Section 8-9(b)(1) of the Duluth City Code provides that the violation of any law relating to the operation of a liquor establishment shall be deemed to be good cause for disciplinary action up to and including imposition of a civil penalty, license suspension or license revocation.
2. Section 8-35 of the Duluth City Code provides that the licensee shall be responsible for the conduct of its place of business and any violation of Chapter 8 of the Duluth City Code committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.
3. The Licensee is liable for the violation occurring on its licensed premise on October 6, 2010.
4. Section 8-9(c) of the Duluth City Code provides that the presumptive penalty for the current violation is a \$500 civil penalty. Mitigating circumstances exist as follows: The Licensee has been in business for seven years with no prior violations. The Licensee has been a good corporate citizen. Immediately following this incident the Licensee set up a policy to reinforce checking the identification of anyone who appears 35 years of age and younger. The Licensee paid a district court fine in the amount of \$585.00.

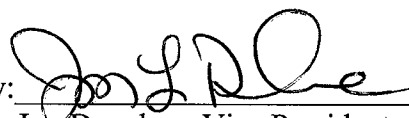
RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose a civil penalty as follows:

1. Payment of a \$500 penalty; and
2. That payment of \$250 of the penalty be stayed for a period of one year on the condition that the Licensee have no same or similar offenses within the one year; and
3. That payment of \$250 of the penalty be made within 30 days of final council action.

Dated: 7/5/11

DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION

By: 
Jon Donahue, Vice President

Alcohol, Gambling, and Tobacco Hearing
June 1, 2011
Thai Mia, Inc., d/b/a Thai Krathong, 308 South Lake Avenue

Cox: Hearing to decide what action should be taken regarding the on sale intoxicating liquor license of Thai Mia, Inc., 308 South Lake Avenue.

Lehr: This matter involves the sale of intoxicating liquor to an underage person on October 6 of 2010 at the Thai Krathong Restaurant by an employee named Amy Roseth. Ms. Roseth was cited for the violation. Under the Administrative penalty code. She did not appeal the citation so that is deemed to be an admission of the violation pursuant to Section 8-35 of the Code. The licensee was also ticketed for the violation and that violation was paid on November 4th, 2010. That was a violation that was filed in District Court under the Duluth City Code and copies of those documents are attached to Notice of Hearing. For purposes of a penalty, it's the position of the Police Department that this would be viewed as a first penalty with the presumption of a \$500.00 civil penalty. In light of the payment of the fine by the licensee, we will not have any testimony tonight and we would simply submit the case on the records that are attached to the Notice of Hearing.

Benkoski: My name is Roger Benkoski. I'm president of Thai Mia, Inc. And I'm here representing Amy Roseth and myself for Thai Mia. Shortly after we had the offense, we had a meeting and established new procedures for checking id's and making sure that we went up all the way to 35 years old which we think is adequate. Now with the summer campaign coming up, we're gonna have an additional meeting to establish the same rules. We're trying to do everything we can to stay with the State statute and we've been in business for about seven and a half years and this is our first offense. I'm very clear on this. We admit that we did wrong, and we just ask you to have some lenience on us. We're a Hmong operation. It's a tough world out there in this year's economy.

Donahue: Any discussion? Anybody have any recommendations? Attorney Lehr.

Lehr: I do have an additional comment. Since this matter was ticketed in District Court, if you'll note from Exhibit #5 that the licensee was fined \$500.00 plus \$85.00 state surcharge. They did pay \$585.00 in fine on the ticket.

Donahue: Okay. I would make a motion to fine \$500.00 with \$250.00 stayed for one year if no same or similar violations occurs within that year of the offense. Seven years and this is the first time that you've been guilty. I just hope we don't see you here again for another seven years if ever.

Benkoski: Well, I don't want to be here either.

Donahue: I mean that's my recommendation unless any other members have any other recommendations.

Pekkala: What are the mitigating circumstances are for the City Council.

Donahue: Thank you. For being a good corporate citizen of the City of Duluth, staying out of trouble for seven years and doing the best he can do under the circumstances. I'll tell you right now that sometimes the City Council looks at our recommendations and they overrule them. So whenever you get your notice when you'll be coming up on the City Council docket if this is to be approved, I suggest that you show up and at least be ready to speak if so called upon.

Benkoski: Okay.

Birchland: I second that motion. Add to that they set up a policy immediately following this first violation to re-enforce the fact that they are going to check id's for everyone who even appears to be 35 years of age, which probably should even be older than that. I'm not offended when they card me and it happens all the time.

Benkoski: I bet it does.

Donahue: All in favor say "Aye".

Aye. Motion passes unanimously.

Lehr: I do have a question. Would the fine be payable within 30 days of City Council approval?

Donahue: Thank you. 30 days. You will get a notice from the clerk's office informing you when it will be going to the City Council.

Benkoski: Thank you.

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

* * * * *

NOTICE OF AND ORDER FOR HEARING

* * * * *

TO: Thai Mia, Inc., d/b/a Thai Krathong, Attention: Duangrudee B. Benkoski, 308 South Lake Avenue, Duluth, MN 55802.

PLEASE BE ADVISED that on **June 1, 2011**, at 4:45 p.m. in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings Minnesota Rules Chapter 1400, Part 5550, et.seq, to the extent applicable, and Minnesota Statutes §14.57 through §14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed

to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission and one will be appointed.

A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing.

The person representing the City, who you should contact to discuss settlement or other concerns is Terri L. Lehr, Assistant City Attorney.

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

1. Licensee is licensed by the City of Duluth for “on-sale” Intoxicating Liquor at a premises located at 308 South Lake Avenue, Duluth, Minnesota.
2. On or about October 6, 2010, Amy M. Roseth, an employee of Licensee, sold and served intoxicating liquor to an underage person at Licensee’s business establishment known as the Thai Krathong Restaurant. Roseth was cited for the violation and failed to appeal or otherwise challenge the citation within the allowed time period. *See City Docs. No. 1-3 (Duluth Police Department Report ICR# 10-381067; City of Duluth Ordinance Violation Ticket No. LP10000330; and Statement Showing Amount Due With Late Fees).*
3. Licensee was cited under Duluth City Code section 8-35 for the illegal sale and convicted of this offense on November 4, 2010. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket No. DO53618; and Register of Actions from District Court).*
4. Pursuant to City Code Sections 8-9(a) and (b)(1) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good

cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

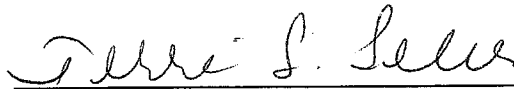
5. This is the Licensee's first offense for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.
6. Pursuant to Duluth City Code section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.

(Records Supporting This Notice Are Attached As City Documents Nos. 1-5).

Dated: 4/29/11

JEFFREY J. COX, Secretary
Alcohol, Gambling and Tobacco
Commission

and



TERRI L. LEHR (0191668)
Assistant City Attorney

Gunnar B. Johnson, City Attorney
Attorneys for the Alcohol, Gambling and
Tobacco Commission

Duluth Police Department
Main Office

Reported Date: 10/06/2010 Time: 19:42 Case No.: 10381067
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED
Class: M4199 Occurrence Date: 10/06/2010
Location: 308 S LAKE AVE, 1DU, DULUTH, MN, , 55802

===== NARRATIVE =====

SYNOPSIS

This report involves the arrest of AMY MARIE ROSETH, DOB/01/14/88, for selling alcohol to a minor. ROSETH is an employee of the Thai Krathong Restaurant/Bar.

NARRATIVE

On 10/06/10, I, Officer Stovern, along with Officer Rodman (323), was working alcohol compliance checks.

At approximately 1943 hours, we had 20-year-old NICHOLAS EDWARD PRACHAR, enter the Thai Krathong Restaurant/Bar. Officer Rodman and I watched as PRACHAR walked up to the bar and sat down and was served a bottle of Bud Light beer, which he paid for. PRACHAR then got up and exited the bar.

Officer Rodman and I walked in and confronted the bartender that served PRACHAR. She identified herself with a Minnesota photo ID as AMY MARIE ROSETH, DOB/01/14/88. ROSETH was issued an administrative citation charging her with selling alcohol to a minor under City Ordinance 8-27.

**CITY OF DULUTH
CITY ORDINANCE VIOLATION**

This Citation charges you with a violation
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number 10-381067		Date/Time Issued 10-6-10 1943	
Alleged Violator's Name AMY MARIE ROSETH			
Address 722 E 1ST ST DULUTH MN		City DULUTH	State MINN
DOB 01-14-88		Phone Number 218-310-7278	
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Date of Violation 10-6-10		Time of Violation 1941	
Location THAI KRATHONG 308 Lake Ave. S.			
Charge SELL ALCOHOL TO MINOR		Ordinance No. 8-28	
Description MINOR NICHOLAS PRACHAR SERVED BOTTLE BUD LIGHT WAS NOT CAGED			
Officer Signature B. Stover			
Officer Name (Print) STOVERN/327		Badge No. 327	
Served: In person <input checked="" type="checkbox"/> By mail <input type="checkbox"/>		Positively Identified <input checked="" type="checkbox"/>	
Date Due: 10-16-10		Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: LP10 000330			

City Doc. No. 2

City Doc. No. 3

Ticket Number P10000330		Ticket Date 10/06/2010	
Issue Date 10/06/2010		Issue Time 19:41	

Drivers Lic/State/DOB _____		_____		_____	
Name Last/First/Mi ROSETH _____		RMY _____		01/14/1988	
Street Address 722 E. 1ST ST.		_____		_____	
City/State/Zip DULUTH _____		MN _____		55805	

Ticket Details	
First Amount 200.00	Paym. Entered _____
Penalty 50.00	Return Date _____
Miscellaneous: _____	Notice 1 Date 10/28/2010
Bad Check Fee _____	Notice 2 Date 11/15/2010
Paid Amount _____	Notice 3 Date 12/07/2010
Denied _____	Notice 4 Date _____
Amount Due 250.00	Partial Notice _____
Disposition _____	Collection Letter _____
Disp. Date _____	Ticket Type Manual
Tks. Entered 10/06/2010	Ticket Status ACTIVE

STATE OF MINNESOTA COUNTY OF ST. LOUIS DISTRICT COURT		COMPLAINT		Court Number	
DIVISION				CO, CD	
DRIVER LICENSE NUMBER		STATE <input type="checkbox"/> MN		ICR NUMBER 10-381067	
NAME - FIRST/MIDDLE/MAIDEN Thai Mia, Inc				LAST	
STREET ADDRESS 308 S. Lake Ave					
CITY Duluth		STATE ZIP CODE MN 55802			
DATE OF BIRTH	EYES	HEIGHT	WEIGHT	SEX	JUV. PAR./GUAR.
VEHICLE LICENSE PLATE		STATE	MAKE	MODEL	COLOR
DATE OF OFFENSE	TIME	<input type="checkbox"/> Endanger Life or Property <input type="checkbox"/> Unsafe Conditions (2 or more) <input type="checkbox"/> Accident Type: <input type="checkbox"/> PD <input type="checkbox"/> Injury <input type="checkbox"/> Fatal <input type="checkbox"/> PED		<input type="checkbox"/> Hazardous Material <input type="checkbox"/> Commercial Vehicle	
10-6-10	1:43 A.M.				
LOCATION & CITY (IF APPLICABLE) 308 S. Lake Ave				MILEPOST Duluth	
OFFENSE DESCRIPTION NO. 1 <input type="checkbox"/> DRIVER <input type="checkbox"/> OWNER <input type="checkbox"/> PASSENGER <input type="checkbox"/> OPERATE <input type="checkbox"/> PARK Licensee liable for Unauthorized Use					
STATUTE ORDINANCE 8-35				SPEED (Over Limit) 1004 mph in zone	
OFFENSE DESCRIPTION NO. 2 <input type="checkbox"/> DRIVER <input type="checkbox"/> OWNER <input type="checkbox"/> PASSENGER <input type="checkbox"/> OPERATE <input type="checkbox"/> PARK					
STATUTE ORDINANCE					
OFFENSE DESCRIPTION NO. 3 <input type="checkbox"/> DRIVER <input type="checkbox"/> OWNER <input type="checkbox"/> PASSENGER <input type="checkbox"/> OPERATE <input type="checkbox"/> PARK					
STATUTE ORDINANCE					
OFFENSE DESCRIPTION NO. 4 <input type="checkbox"/> DRIVER <input type="checkbox"/> OWNER <input type="checkbox"/> PASSENGER <input type="checkbox"/> OPERATE <input type="checkbox"/> PARK					
STATUTE ORDINANCE					
COURT NAME AND LOCATION:					
<input type="checkbox"/> COURT ADMINISTRATOR - 100 N. 5th AVE. W. - ROOM 109 DULUTH, MN 55802 (218) 726-2464					
COURT DATE	COURT TIME	NOTE: Refer to Back of Summons For Further Information		D053618	
To be Set	A.M.				
The Undersigned being duly sworn, deposes and says that the person named on this complaint did commit the above offense(s).					
OFFICER Vand		BADGE 375			

www



CITY OF DULUTH
CITY CLERK'S OFFICE
330 City Hall • 411 West First Street
Duluth, Minnesota 55802
Phone: (218) 730-5500
FAX: (218) 730-5923

FOR OFFICE USE ONLY

DATE

07/01/10

LICENSE #

58072

LICENSE RENEWAL APPLICATION

GOVERNMENT DATA PRACTICES ACT - CLASSIFICATION WARNING: The data you supply on this form will be used to process the license you are applying for. You are not legally required to provide this data, but we will not be able to process the license without it. Some of the data will be classified as public data if and when the license is granted. Private financial information including a tax identification number and social security number are classified as private data and will be available to governmental personnel and other governmental agencies whose access is necessary to perform their official duties.

Period: 09/01/2010 -- 08/31/2011

License Type

Fee

Clerk's Fee

Total

On Sale Intox Liquor-New

\$3,908.00

\$0.00

\$3,908.00

On Sale Sunday

\$167.00

\$0.00

\$167.00

Pay this Amount: \$4,075.00

Licensee/Business Address/Premises

THAI MIA, INC.

308 S LAKE AV

DULUTH, MN 55802

Tradename: THAI KRATHONG

Business Phone: 733-9774

Managers Name/Address/Phone

DUANGRUDEE B BENKOSKI

4725 DOW RD

SAGINAW, MN 55779

729-0876

Owner of Business Premises

SHERMAN & ASSOC.

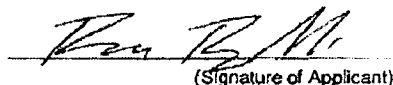
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Plat/Parcel: 00000 / 00000

Comments:

DUANGRUDEE BOONPA BENKOSKI, 49%;
ROBERT BENKOSKI, 51% OWNERS.

I hereby state that all information here is true and correct and that I shall comply with all the provisions of the Ordinances of the City of Duluth and Laws of the State of Minnesota and their Amendments.


(Signature of Applicant)

THAI MIA, INC.
DBA: THAI KRATHONG
4725 DOW RD
SAGINAW, MN 55779


Approved David Montgomery Chief Administrative Officer

AUG 30 2010

002301